



Arizona Department of Administration, Procurement Compliance, Administration & Policy Office Publication

PCAP Technical Bulletin
No. 011 Revision No. 1

Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors - Governor's Executive Order 2005-30

I. Statement:

This Technical bulletin is issued to update and revise AZSPO policy No. 011 "Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors" – Governor's Executive Order 2005-30

II. Authority:

- Executive Order 2005-30 Ensuring Compliance with Federal Immigration Laws by State Employers and Contractors
- Federal Immigration & Nationality Act Sections 274A & 274B.

III. Alternate document/publication resources:

- The Governor's web-site; www.azgovernor.gov
- U.S. Department of Labor's web-site www.uscis.gov

IV. Definitions:

1. PCAP: The Procurement Compliance, Administration and Policy Office. The central Procurement authority for the State of Arizona.
2. FINA: Federal Immigration and Nationality Act.
3. State Agency: For the purposes of this publication, State Agency means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or corporation commission of the State. (i.e. State governmental unit).

V. Overview:

Governor's Executive Order 2005-30 discusses compliance with federal immigration Laws by both state employers and state contractors. This publication shall cover only sections 2, 3, & 4, of the Executive Order, or those sections that pertain to State contractors and subcontractors. The following are sections 2, 3, 4 of Executive Order 2005-30:

2. *All state agencies shall endeavor to ensure compliance by state contractors with federal law and regulations related to the immigration status of their employees. In particular, state agencies shall insist in all applicable state contracts that 1) each state contractor warrant that it is in compliance with all federal immigration laws and regulations; 2) all subcontractors to the contractor execute similar warranties; 3) the breach of any such warranty shall be deemed a material breach of the applicable contract, subject to monetary penalties or other penalties up to and including termination of the contract; and 4) the state agency shall retain the legal right to inspect the papers of any employee who works on the contract to ensure that the employer is in compliance with its warranties.*
3. *Each state agency that enters into a state contract shall establish procedures to conduct random checks of the employment records of state contractors to ensure that their contractors are in compliance with their warranties.*
4. *Notwithstanding paragraph two (2) above, no state agency shall deem a contractor in material breach of its contract if the contractor can establish that it has followed the employment verification provisions of the Federal Immigration & Nationality Act as set forth in Sections 274A and 274B of that Act, including implementing regulations and agreements between the Department of Homeland Security and the Social Security Administration's Verification Service.*

VI. Policy:

To implement the requirements of Governor's Executive Order 2005-30, sections 2, 3, & 4, PCAP provides the following:

- 1 The State shall endeavor to do business only with those contractors and sub-contractors that are in compliance with the Federal Immigration and Nationality Act. This policy shall apply to all State contractors including subcontractors.
- 2 State Agencies shall include the following provisions in all solicitations and contracts:

2.1 Special Instructions to Offerors Section:

Federal Immigration Laws, Compliance by State Contractors:

By signing the Offer the Offeror warrants that it and all proposed subcontractors are in compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and

regulations related to the immigration status of its employees. The Offeror shall obtain statements from all proposed subcontractors certifying compliance with this requirement and shall furnish the statements to the Procurement Officer upon request.

2.2 Special Terms and Conditions Section:

Federal Immigration Laws, Compliance by State Contractors:

By entering into the contract, the contractor warrants compliance with the Federal Immigration and Nationality Act (FINA) and all other Federal immigration laws and regulations related to the immigration status of its employees. The Contractor shall obtain statements from its subcontractors certifying compliance and shall furnish the statements to the procurement officer upon request. These warranties shall remain in effect through the term of the contract. The contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act, for all employees performing work under the contract. I-9 forms are available for download at USCIS.GOV.

The State may request verification of compliance for any contractor or subcontractor performing work under the contract. Should the State suspect or find that the contractor or any of its subcontractors are not in compliance, the State may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the contract for default, and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the contractor.

VII. Procedures for Random Reviews

The Procurement Compliance, Administration and Policy Office (PCAP) shall perform random reviews of State contractors to verify compliance with Executive Order 2005-30 and this publication.

1. Random Reviews: PCAP shall perform random reviews of contracts costing \$50,000 or more. Agency chief procurement officers shall furnish PCAP with a list of all procurement contracts of \$50,000 or more for use in making random selection of contractors.
2. Employment Record Verification: PCAP shall request an Employment Record Verification Form for each contract selected for review. The forms shall be completed and returned by the contractor to PCAP by the date specified in the request.
3. Employment Record Verification Retention: PCAP shall retain the completed Employment Record Verification Form and shall furnish a copy of the form to the appropriate procurement officer.
4. Non-Compliance: If a Contractor fails to comply with this request or fail to timely respond to a random review, the procurement officer shall issue a written notification of default to the contractor. If a contractor

fails to cure the default in a timely manner or to provide adequate assurance that the default will be cured, the procurement officer may take appropriate actions, including termination of the contract and seek appropriate remedies. A contractor's failure to comply with this policy can result in debarment or suspension.

John O. Adler, CPO


State Procurement Administrator

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Effective Date